IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12056 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDULAL T SONI

Versus

HEIRS OF HAJIBHAI B SEPOY

Appearance:

1. Special Civil Application No. 12056 of 1993

MR AK CLERK for Petitioner No. 1

NOTICE SERVED for Respondent No. 1,1/2

MS NANDINI JOSHI for Respondent No. 1/1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Clerk for the

petitioner and Ms. Nandini Joshi, learned advocate for the respondent workman. By way of this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality, validity and propriety of the award dated 23.8.1993 made by the Labour Court, Ahmedabad in Reference (LCA) No. 1146 of 1987 wherein the labour court has, while allowing the reference made at the instance of the workman, directed the petitioner first party to pay an amount of Rs.5,000.00 (Rs. five thousand only) to the second party workman towards his legitimate retrenchment compensation, notice pay and costs of the reference. The workman concerned expired on 31.5.1992 and, therefore, his heirs and legal representatives have been brought on the record.

This petition was admitted by this court by issuing rule thereon by order dated 22.12.1993 and while issuing rule, interim relief in terms of para 8(A) was granted by this court.

During the course of hearing of this petition, it was submitted by the learned advocate Mr. Clerk on behalf of the petitioner that the petitioner had, in fact, not engaged the respondent workman and the petitioner is not an industry and he is having one small shop. It was also submitted by him that at the time when the complaint was filed by the workman, it was stated that he was aged about 75 years and according to the respondent, he had worked with the petitioner for about eight years. Therefore, according to him, the workman must have been engaged after completion of the age of retirement. He, therefore, submitted that once an employee has retired and thereafter, he has been engaged, then, the termination of such an employee would not fall within the definition of retrenchment under section 2(oo) of the Industrial Disputes Act, 1947. In support of this contention, reliance has been placed by Mr. Clerk on the decision of the apex court in case of Binoy Kumar Chatterjee v. M/s. Jungantar Limited and others reported in AIR 1983 SC 865. He also submitted that there was no document produced by the workman to show that he was engaged by the petitioner as alleged and that he worked with the petitioner for eight years as alleged. He submitted that these facts were not properly appreciated by the labour court and the labour court has committed an error in holding that he was the workman of the petitioner. According to him, the labour court was not having jurisdiction to pass such orders. He also emphasized that the Inspector under the Bombay Shops and Establishment Act visited the shop of the petitioner on 8th November, 1976 and the name of the respondent workman

was not in the visit book and, therefore, naturally it can be inferred that the respondent was not engaged by the petitioner but this aspect has not been properly considered by the labour court. He also submitted that the labour court has committed an error in granting lumsum award of Rs.5000.00 in favour of the respondent workman without jurisdiction and according to him, that is the basic error committed by the labour court and, therefore, this court should interfere with the award in question made by the labour court. Except these submissions, no other submissions have been made by the learned advocate Mr. Clerk on behalf of the petitioner, though he read the entire award made by the labour court before this court while making his submissions.

On the other hand, learned advocate Ms.Nandini Joshi appearing for the petitioner has submitted that there was clear admission in writing made by the petitioner in the letter addressed by the petitioner to the Commissioner of Labour wherein the facts of engagement of the respondent were admitted by the petitioner. No documents were produced by the petitioner before the labour court and the case of the workman as per his deposition that he was engaged by the petitioner for eight years and thereafter his services were terminated by the petitioner on 2nd October, 1986 without following the procedure prescribed under section 25F of the ID Act, 1947 was not controverted by the petitioner by producing any rebuttal evidence and, therefore, this court should not disturb the findings of fact recorded by the labour court. She has also submitted that after all, the labour court has granted only an amount of Rs.5000.00 in favour of the respondent workman which includes his right to receive retrenchment compensation, notice pay and costs of the reference and looking to the smallness of the amount also, this court should not disturb the findings of fact recorded by the labour court. She also submitted that if the ultimate out come of the award in question is reasonable, just and proper, then, this court may not interfere with the same by exercising the powers under Article 227 of the Constitution of India. It was also submitted by her that the workman concerned has already expired during the pendency of the proceedings and his heirs have been brought on the record. Thus, according to her submissions, the award made by the labour court is just and proper supported by the cogent and convincing reasons and the labour court has not committed any error in making such an award and, therefore, this court should not disturb the same.

I have considered the submissions made by the

learned advocates for the parties. I have also perused the award in question made by the labour court. I have also considered the decision of the apex court in the matter of Binoy Kumar Chatterjee v. M/s. Jungantar Limited and others reported in AIR 1983 SC 865, in light of the facts of the present case. In the middle of para 6 of the said judgment, it has been observed by the apex court as under:

> "In our judgment none of those cases can be construed as authority governing the present case. In all those cases, the question arose on a termination of the workman's services at a point of time when the age of superannuation had not yet been reached. The age of superannuation marks the end point of the workman's service. If he is employed afresh thereafter for a term, such employment cannot be regarded as employment contemplated within the definition of the expression 'retrenchment'. We are of the view that the termination of the petitioner's service on the expiry of the period of his contract on Dec.1, 1977 does not fall within the expression 'retrenchment' in S. 2(oo) of the Industrial Disputes Act."

In view of the above observations, the special leave petition filed by the petitioner workman was dismissed by the apex court in the aforesaid decision. Looking to the facts of the case before the apex court, the petitioner before the apex court was appointed to the post of sub editor in the employment of M/s. Jugantar Ltd. in April 18, 1960. In the following month, he was transferred to Delhi as a Special Correspondent. In August, 1976, he was transferred to Calcutta as an assistant editor. On completing 60 years of age, he was served with a notice of retirement dated 6.11.1976 informing him that he stood retired w.e.f.1.12.1976 and was paid and he willingly received his dues on account of gratuity and provident fund following such retirement. After his retirement, he was offered fresh employment as an assistant editor for a period of twelve months and on expiry of the period of of twelve months, he raised dispute alleging that his service has been wrongly terminated with effect from Dec.1, 1976 and that he was entitled to continue in service. Thus, from the aforesaid facts of the case before the apex court, it appears that the apex court held that termination of the petitioner's service on the expiry of the period of his contract on Dec.1, 1977 does not fall within the expression 'retrenchment' in S. 2(oo) of the Industrial

Disputes Act. These are not the facts of the case before hand. If the facts of the present case are considered, then, as alleged by the workman, he was engaged by the petitioner and he worked with the petitioner for about eight years and thereafter, his services were terminated without complying with sec. 25F of the ID Act. Here, it was not the case of the petitioner that the respondent, after his retirement, was appointed for any specific term and after completion of the said term, he was discontinued. This was not the case of the petitioner before the labour court. Therefore, it cannot be said that his termination would not fall within the expression retrenchment in s.2(oo) and, therefore, would not attract the provisions of sec. 25F of the ID Act. Therefore, on facts, the decision in case of Binoy Kumar (supra) would not apply because in the said decision, the apex court considered the question of continuation of employment with one employment after retirement which is not the case before hand. Looking to the facts of the present case, the workman was appointed or engaged by the petitioner after his retirement from the other employment and it does not appear that he was engaged or appointed by the petitioner for any specific term or period and after completion of such period, he was relieved. In view of that, the decision cited by Mr. Clerk would not apply to the facts of the present case. Here, the question of only to the extent that the respondent workman, after his retirement, was engaged by the petitioner and he worked with the petitioner for about eight years for doing the work to be carried out in the shop and his service was allegedly terminated by the petitioner on 2nd October, 1986 and he was receiving the salary of Rs.155.00 p.m. as alleged. Before the labour court, statement of claim was filed by the workman and the written statement thereto was filed by the petitioner wherein the averments have been made by the workman have been denied by the petitioner. The facts disclosed by the petitioner before the labour court were to the effect that the respondent was previously working with the Brooke Bond Tea and after his retirement from the said company, and after receiving the hand some amount of retirement benefits, he was employed by the petitioner and before the labour court, the petitioner produced four documents vide Exh. 13 and one witness was examined by the petitioner at Exh. 19 and thereafter, vide Exh. 29, written submissions were made by the petitioner before the labour court. Before the labour court, the workman was examined at Exh. 50 and written submissions were made at Exh. 28 and thereafter, oral and the documentary evidence on record was examined and considered by the labour court and the visit book showing the visit of the

Inspector under the Bombay Shops and Establishments Act on 8th November, 1976 which was placed on record was considered by the labour court and naturally name of the respondent was not there because prior to that, his service was terminated by the petitioner in or around October, 1976 and, therefore, his name could not be there in November, 1976. No doubt there some contradictory statements of facts made by the workman but the question is that whether the workman was engaged by the petitioner or not and for that, it has been observed by the labour court at page 20, internal page 6 of the award that the provisions of the Bombay Shops and Establishments Act would apply to the establishment of the petitioner and the first party petitioner was the owner of the establishment as per the said Act and the second party workman was the servant of the petitioner. It has been observed by the labour court that the petitioner has not maintained necessary statements, Hajri Patrak etc. It has also been observed by the labour court that when the complaint filed by the second party before the Labour Commissioner, it was informed by one Soni Kanubhai Panchal, Panchal SHankarlal and Soni Chimanlal in writing that the second party was working with the petitioner. It was also observed by the labour court that when the first party has obtained the license of the shop under the Bombay Shops and Establishments Act, then, it is necessary for the petitioner to comply with the provisions of the said Act and the Rules framed thereunder. Witness for the first party petitioner has also stated in his cross examination that they are not maintaining the muster roll as observed by the labour court. In view of these facts, appreciating the letters addressed by the aforesaid persons namely Soni Kanubhai, Panchal Shankarlal and Soni CHimanlal to the Labour Commissioner and also considering the deposition of the workman and the witnesses for the petitioner, the labour court was of the view that the justice would be done by giving conciliatory award so that the injustice may not be caused to either of the parties and, therefore, the labour court has made award of lumsum amount of Rs.5,000.00 alone and except that, no other order has been made by the labour court. I have considered the observations made by the labour court in support of the said award.

The question is whether in such facts of the case, whether the labour court is having jurisdiction to pass such an order and in case if the reasonable order has been made by the labour court based on some conciliatory approach, then, whether this court is having jurisdiction to interfere with such just,fair and

reasonable order in exercise of the powers under Article 227 of not. This aspect has been examined by this court in case of Executive Engineer Panam Irrigation Division, Godhra and another versus Dilipsinh C. Chavda and others, reported in 2003 Lab IC 1707. In the said decision, this Court has considered the decision of the Delhi High Court in case of Management of the Statesman Ltd. and Lt. Governor reported in 1995 (3) LLJ 648 given by the Hon'ble Mr. Justice B.N. Kirpal as then he was on 28th July, 1987. In para 11 of the said judgment, it has been observed by the Delhi High Court as under:

"11. Even if the Labour Court did not have the jurisdiction or was not right in review the order dated 3rd April, 1980, the question would still arise that if in law the conclusion arrived at by the labour court in its order dated 25th November, 1985 is incorrect, then should this court, in exercise of its jurisdiction under Article 226 of the Constitution, interfere with such an order. In this connection, reference may be made to the decision of a Division Bench of this Court in LPA No.56 of 1978, Maya Sharma v. Management of Mother's International School. In that case, the services of a teacher had been terminated. The teacher had filed an appeal to the Delhi School Tribunal. The Delhi School Tribunal upheld the contention of the teacher and came to the conclusion that her services had been wrongly terminated. In a petition being filed in this court, it was held that the appeal to the Delhi School Tribunal by the teacher was not maintainable. Nevertheless, the Division Bench came to the conclusion that a writ court ought not to exercise its discretion in setting aside a fair and a just order, even if it is passed by a tribunal which had no jurisdiction to entertain the said appeal. To the same effect is a decision of this court in civil writ no. 51 of 1978. The Management of Mother's International School and Anr. v. The Delhi School Tribunal & Ors. decided on 20th January, 1987, where, following the decision of the Division Bench in Maya Sharma's case, it was observed that a correct and fair order which is passed should not be set aside on a technical ground. In arriving at this conclusion, it was noted that the writ is not issued as a matter of right and a writ court may, in proper cases, not set aside the orders which may be technically bad in law as long as the orders which are passed are just, fair and

proper. It is, therefore, necessary to see as to whether the order which was passed by the labour court on 25th November, 1985 to the effect that the management would not be permitted to lead evidence on any point except to prove ill health as being a reason for terminating the workman's service, is correct or not. "

In para 16 of the said judgment, it has been further observed as under:

"16. It is the management which knows the reason why the services of an employee are terminated. If it does not disclose the reasons to the Labour Court, then the Labour Court is obliged to find what the said reasons are. Once those reasons are known, principles of natural justice would require another opportunity being granted to the management to justify the existence of such reasons. Where, however, the reason for termination of the services is known, the question of the reason for termination being determined by the Labour Court would not arise and the only question which would arise would be to give an opportunity to the management to prove the existence of such a reason. In the present case, the reason for terminating the services is stated to be the continued ill health of the workman. This is the only reason why the termination order was passed. Therefore, the question of affording the petitioner opportunity to prove misconduct, which was not the reason for passing the order of termination, would not arise. The labour court was, therefore, right on merits, in order dated 25th November, 1985 when it came to the conclusion that the Management should not be given an opportunity to prove the charges of misconduct. As the decision of the labour court is right, fair and a just decision, I see no reason as to why I should interfere with the same, even if it was not proper for him to have reviewed the earlier order dated 3rd April, 1980."

Therefore, in view of the observations made by the Delhi High Court in the aforesaid decision, considered by this court in case of Executive Engineer Panam Irrigation Division, Godhra, if the ultimate order passed by the labour court is just, fair and reasonable, then even though the labour court is not having jurisdiction to pass such order, this court may not

interfere with such just, fair and reasonable order in exercise of the powers under Art.227 of the Constitution of India. Looking to the facts of the present case, considering the smallness of amount in the award of the labour court wherein the labour court has granted only Rs.5000.00 in lumsum as a conciliatory award as stated earlier, according to my opinion, labour court has committed no error in making such an award. According to my opinion, the labour court has not committed any error in making such an conciliatory award. The labour court is having jurisdiction of make such conciliatory award relying upon the oral as well as the documentary evidence on record and the admission of the petitioner. Mr. Clerk has not been able to point out any infirmity in the order made by the labour court. He has also not been able to point out that the findings given by the labour court are perverse and without jurisdiction.

I am, therefore, of the opinion that the award of the labour court is just, fair and reasonable and, therefore, there is no substance in this petition and the same is, therefore, required to be dismissed. Same is, therefore, dismissed. Rule is discharged. There shall be no order as to costs. Interim relief granted earlier shall stand vacated.

Dt.14.8.2003. (H.K. Rathod,J.)
Vyas